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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION  
13

14 CHARLI T. MICHAELS,	}	No. CV 08-05837 SJO (JWJx)
15 Plaintiff,		
16 v.		Trial: April 6 and 7, 2010
17 UNITED STATES OF AMERICA,		Time: 9:00 a.m.
18 Defendant.		Court: Spring St.- Ctrm.1 (Second Floor)
19	)	Hon. S. James Otero

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20  
21 **FINDINGS OF FACT**  
22 **AND CONCLUSIONS OF LAW [LOCAL RULE 52-1]**  
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1 A bench trial was held on April 6 and 7, 2010. At the close the case, the  
2 Court ordered defendant's counsel to prepare [Proposed] Findings of Fact and  
3 Conclusions of Law and confer with plaintiff's counsel regarding such proposed  
4 findings. Having considered the testimony of the witnesses, the materials  
5 submitted by the parties, and after reviewing the evidence, the Court makes the  
6 following findings of fact and conclusions of law pursuant to Rule 52 of the  
7 Federal Rules of Civil Procedure:

8 1. Plaintiff, Charli Michaels, brings this action against defendant, the  
9 United States of America, pursuant to the provisions of the Federal Tort Claims  
10 Act, 28 U.S.C. §§ 1346(b) and 2671-2680, seeking damages. To have a cognizable  
11 claim under the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., the claim must  
12 arise from the negligent or wrongful act of a government employee acting within  
13 the scope of his or her employment under the circumstances where the United  
14 States, if it were a private individual, would be liable under the law of the State  
15 where the claim arose. 28 U.S.C. §§ 1346(b), 2674; *Dalehite v. United States*, 346  
16 U.S. 15 (1953). California law is applicable because the accident occurred in  
17 California. *Id.*

18 2. In California, actionable negligence requires a legal duty to use care,  
19 breach of that duty, and causation of injury. *U.S. Liab. Ins. Co. v. Haidinger-*  
20 *Hayes, Inc.*, 1 Cal. 3d 586, 594 (1970); *Mendoza v. City of Los Angeles*, 78 Cal.  
21 Rptr. 2d 525, 528 (1998). A plaintiff must prove by a preponderance of the  
22 evidence that the claimed damages were caused by the negligent act or omission of  
23 an employee of the United States. 28 U.S.C. §§ 1346(b), 2674. Plaintiff cannot  
24 recover without proving by a preponderance of the evidence that defendant was  
25 negligent and defendant's negligence was the proximate cause of her alleged  
26 injuries. *Elder v. Pac. Telephone and Telegraph*, 66 Cal. App. 3d 650, 657 (1977);  
27 *Brown v. Poway Sch. Dist.*, 4 Cal. 4th 820, 827 (1993) (plaintiff's burden to prove  
28 "every essential fact on which [she] relies"); *Hawthorne v. Siegel*, 88 Cal. 159, 163

1 (1981) (plaintiff has the burden of demonstrating a causal connection with her  
2 alleged injuries); Cal. Civ. Code § 3333.

3 3. The car accident occurred on October 3, 2005, at approximately 4:40  
4 p.m., involving plaintiff Charli Michaels driving her 1999 BMW 323i, and  
5 Christopher Keeler driving a government-owned 2003 Oldsmobile Alero.

6 4. At the time of the accident, Mr. Keeler was acting within the course  
7 and scope of his employment with the federal government.

8 5. Ms. Michaels and Mr. Keeler were traveling northbound on Interstate  
9 5 ("I-5") at the time of the accident.

10 6. Mr. Keeler was traveling in the Number 1 lane prior to the accident  
11 and he made an unsafe lane change from the Number 1 lane to the Number 2 lane  
12 at the time Ms. Michaels was in the Number 2 lane and in control of the Number 2  
13 lane, in violation of Vehicle Code section 21658(a), causing Ms. Michaels to lose  
14 control of her vehicle in the attempt to evade contact with Mr. Keeler's  
15 government vehicle.

16 7. The sole cause of the accident was the negligence of Mr. Keeler and  
17 Ms. Michaels did not contribute to the accident. Her actions in avoiding contact  
18 were reasonable under the circumstances.

19 8. The vehicles were traveling at approximately 70 to 75 miles an hour at  
20 the time of the incident.

21 9. Based on the persuasive deposition testimony of CHP Officer Brian J.  
22 Baird and the traffic accident report, there was no contact between the two  
23 vehicles.

24 10. It was reasonable for Ms. Michaels to try to avoid contact and that  
25 caused her to spin out and to collide with the center divider.

26 11. Mr. Keeler was negligent in his operation of the government vehicle  
27 and breached the duty of reasonable care, which he owed to persons on the  
28 highway, including Ms. Michaels.

1           12. The accident could have reasonably been avoided by Mr. Keeler if he  
2 had not made an unsafe lane change.

3           13. Ms. Michaels suffered from a significant pre-existing medical  
4 condition, which included a severe degenerative disc disease, primarily cervical  
5 disease, and that she had a long history of the arthritic condition prior to the  
6 incident.

7           14. The property damage reasonably caused by the accident is the amount  
8 claimed in Exhibit 35, with the exception of the estimate from Hester's Body Shop  
9 in the sum of \$3,742.87. Plaintiff has not established a relationship between the  
10 need for that repair and any damage to her vehicle arising out of the incident.  
11 Thus, the Court will award \$14,811.88 in property damage.

12           15. Based on all of the evidence, the fair and reasonable medical  
13 expenses arising out of the incident is the sum that's prayed for in Exhibit 35, *i.e.*,  
14 \$17,689. It was reasonable under the circumstances because of the significant pre-  
15 existing medical condition for her to have sought treatment covering the period  
16 from November 2005 through November 2009. In making the determination that it  
17 was fair and reasonable for Plaintiff to have sought treatment, the Court is taking  
18 into consideration some of the particulars regarding the Plaintiff, including the fact  
19 that she was without medical insurance and could not always maintain consistent  
20 medical treatment with any of the treating physicians and because of her job  
21 circumstances, she was required to relocate on a number of occasions, which  
22 created inefficiency in her attempts to seek medical care.

23           16. There is no evidence that Plaintiff is in need of any type of surgical  
24 intervention. The testimony of Dr. Moelleken was not persuasive. His credibility  
25 was significantly undercut by his claim that he would have an opinion regarding  
26 surgery involving a patient that he examined approximately four years ago. That  
27 simply did not make sense to the Court and it does not make common sense.

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1 There is nothing in the medical records that supports any claim for the necessity for  
2 surgery associated with the incident.

3 17. There is nothing in the medical records indicating that Plaintiff is in  
4 need of any type of epidural injections associated with the incident. The best  
5 course of treatment, based on all of the records before the Court, suggests the best  
6 course of treatment is her present treatment, which is chiropractic care in addition  
7 to physical therapy. Probably more importantly, the Plaintiff is in need of a home  
8 care exercise program that she can follow that would alleviate most of her  
9 discomfort associated with her condition.

10 18. The Court will award \$17,689 in past medical specials to date.

11 19. Plaintiff needs additional medical care in the nature of chiropractic  
12 care and therapy. Based on the evidence submitted by Plaintiff, it is hard to  
13 determine how much additional medical care she needs, especially in light of the  
14 fact that she has already received over four years of medical treatment.

15 20. The Court will award \$4,500 in future medical specials, which  
16 consists of 18 weeks of treatment based on Ernest Ferrel, D.C.'s testimony that it  
17 would cost approximately \$125 per session and approximately twice weekly  
18 chiropractic or physical therapy session.

19 21. The claims of past and future lost wages are not supported by  
20 documentation that corroborates plaintiff's testimony regarding her lost wages  
21 claims. At the same time, it seems logical to the Court that the Plaintiff has  
22 suffered impairment of the ability to be gainfully employed full time and has lost  
23 some wages associated with the accident. Based on the evidence submitted by  
24 Plaintiff, it is hard to determine precisely the amount of lost wages. The Court will  
25 award \$15,000 in past and future lost wages.

26 22. The pain and suffering associated with the incident is also difficult to  
27 assess and to measure based on the evidence submitted by Plaintiff. It would seem  
28 to the Court that some of the pain and discomfort that the Plaintiff has been

1 experiencing is caused by her failure to consistently pursue a medical treatment  
2 plan. Plaintiff has a duty to be compliant with the directives of doctors associated  
3 with her care and treatment and it seems to the Court that she has failed to do that  
4 by not following a disciplined exercise regimen at home that has contributed to her  
5 existing pain.

6 23. Based on her significant degenerative disc condition at the time of the  
7 incident, assuming that is was exacerbated, assuming that the length of treatment  
8 would have lasted significantly longer than your standard soft tissue case, and the  
9 trying to assess the emotional trauma associated with undergoing the physical  
10 forces and emotional forces on the date and time of the incident, the Court will  
11 award \$40,000 for past and future pain and suffering.

12 24. The Court awards the sum of **\$92,000.88** to compensate plaintiff for  
13 all her claims of damages. *See* paragraphs 14 (property damage), 18 (past medical

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1 expenses), 20 (future medical expenses), 21 (past and future lost wages), 23 (past  
2 and future pain and suffering).

3  
4 DATED: June 22, 2010.

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6  
7 HON. S. JAMES OTERO  
UNITED STATES DISTRICT JUDGE

8 PRESENTED BY:

9  
10 JAMES P. BALLANTINE LAW OFFICES

11 See attached signature page

12 JAMES P. BALLANTINE

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20 /s/

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